

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

Text of Modified Proposed Regulation

The Board has illustrated changes to the original text in the following manner: regulation language originally proposed is underlined; August 2010 deletions from the language originally proposed are shown in strikeout using a " – " and additions to the language originally proposed are double-underlined. September 2010 deletions from the language originally proposed are shown in ALL CAPITALS with a strikeout using a "–" and additions to the language originally proposed are in ALL CAPITALS.

PROPOSED ADDITION OF SECTION 559. DISCLOSURE OF PLACEMENT AGENT FEES, GIFTS AND CAMPAIGN CONTRIBUTIONS TO ARTICLE 2 OF CHAPTER 2 OF DIVISION 1 OF TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS

(a) Definitions:

1. *Amendment.* Amendment means any modification to an agreement with an External Manager (including by a vote, consent, or waiver by the limited partners/investors or a subset of the limited partners/investors, or separate side agreement or amendment to a side agreement) to continue, terminate, or extend the term of the agreement or the investment period, increase the commitment of funds by CalPERS, or increase or accelerate the fees or compensation payable to the External Manager.
2. *CalPERS Vehicle.* CalPERS Vehicle means a corporation, partnership, limited partnership, limited liability company, association or other entity either domestic or foreign, constituting or ~~or other investment vehicle~~ managed by an External Manager in which CalPERS is the majority ~~(or greater)~~ investor and that is organized in order to invest with, in other or retain the investment manager services of other, External Managers, i.e., a fund of funds.
3. *CalPERS Vehicle Manager.* CalPERS Vehicle Manager means the general partner, managing member, or investment manager of a CalPERS Vehicle.

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4. *Consultant.* Consultant means an individual or firm, and includes an individual designated in a CalPERS contract as a Key Personnel of a Consultant firms who are contractually retained or have been appointed to a pool by CalPERS to provide investment advice to CalPERS but who do not exercise investment discretion.
5. *External Manager.* External Manager means (i) a Person an asset management firm that is seeking to be, or has been, retained by CalPERS or by a CalPERS Vehicle to manage a portfolio of assets (including securities) or other assets for a fee compensation or (ii) a Person that is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding or trading securities or other assets and that offers or sells, or has offered or sold, its securities to CalPERS or a CalPERS Vehicle. The External Manager usually has full discretion to manage CalPERS assets, consistent with investment management guidelines provided by CalPERS and fiduciary responsibility. A CalPERS Vehicle Manager is an External Manager.
6. *Person.* Person means an individual, corporation, partnership, limited partnership, limited liability company, association or other entity (whether domestic or foreign).
7. *Placement Agent.* Placement Agent means any Person or entity hired, employed, engaged, or retained by, or acting serving for the benefit of or on behalf of an External Manager or on behalf of another Placement Agent, who acts or acted for compensation as a finder, solicitor, marketer, cConsultant, broker or other intermediary to raise money or investments from, or to obtain access to, CalPERS in connection with the offer or sale of the securities, assets or services of an External Manager to CalPERS or directly or indirectly including, without limitation, through a CalPERS Vehicle. Notwithstanding the above, Aa Placement Agent shall not include any individual who is an employee, officer, director, equity holder, partner, member, or trustee of an External Manager who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested or held controlled by the External Manager.
8. Placement Agent Information Disclosure. Placement Agent Information Disclosure is defined in subsection (b)(1).

(b) Each External Manager and CalPERS Vehicle Manager is responsible for providing:

1. Providing tThe following information (collectively, the "Placement Agent Information Disclosure") to CalPERS staff or, if applicable, to the CalPERS

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Vehicle Manager within 45 days of the time investment discussions are initiated by the External Manager or the CalPERS Vehicle Manager, but in any event, prior to the completion of due diligence. For proposed and new investments, the Placement Agent Information Disclosure shall be provided by utilizing the "CalPERS Placement Agent Information Disclosure Form -- Proposed and New Investment Agreements" revised July 16, 2010 and incorporated herein by reference. For Amendments to existing investments, ~~In the case of an Amendment,~~ the Placement Agent Information Disclosure is required prior to execution of the Amendment and shall be provided by utilizing the "CalPERS Placement Agent Information Disclosure Form – Amendments" revised July 16, 2010 and incorporated herein by reference.

- a. A statement whether the External Manager, or any of their principals, employees, agents or affiliates has compensated or agreed to compensate, directly or indirectly, any Pperson (whether or not employed by the External Manager or the CalPERS Vehicle Manager) ~~or entity~~ to act as a Placement Agent in connection with the offer of assets, securities, or services to investment by CalPERS or a CalPERS Vehicle.
- b. The name and relationship for each Placement Agent in connection with the investment by CalPERS, and attach aA resume for each Placement Agent detailing the person's education, professional designations, regulatory licenses and investment and work experience. If any such Pperson is a current or former CalPERS Board member, employee or Consultant or a member of the immediate family of any such person, ~~this fact such information~~ shall be specifically noted. When an entity is retained as a Placement Agent, any officer, director, or employee actively providing placement agent services with regard to CalPERS or receiving more than 15% of the placement agent fees shall provide information required by this subsection.
- c. A written copy of any and all agreements between the External Manager and the Placement Agent related to the assets, securities or services offered to CalPERS.
- d. A description of any and all compensation of any kind provided or agreed to be provided to a Placement Agent related to the assets, securities, or services offered to CalPERS, including the nature, timing and value thereof.

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- e. A description of the services to be performed by the Placement Agent and a statement as to whether the Placement Agent is utilized by the External Manager with for all prospective clients or only with a subset of the External Manager's prospective clients.

A written copy of any and all agreements between the External Manager and the Placement Agent.
 - f. The names of any current or former CalPERS Board members, employees, or Consultants who suggested or otherwise assisted in the retention of the Placement Agent.
 - g. A statement that the Placement Agent (or any of its affiliates, as applicable) is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or, if appropriate, the Commodity Futures Trading Commission, and the details of such registration. If, however, the Placement Agent is located and operates operating outside of the United States and interacts exclusively with CalPERS Vehicles formed and operated operating outside of the United States, then the statement may indicate that the Placement Agent (or any of its affiliates as applicable) is registered with a recognized non-U.S. financial regulatory authority and the details of such non-U.S. registration.
 - h. A statement whether the Placement Agent, or any of its affiliates, is registered as a lobbyist with any state or national government.
- 2. Providing anAn update of any changes to any of the information included in the Placement Agent Information Disclosure within 14 calendar days of the date that the External Manager knew or should have known of the change in information.
 - 3. Representing Representation and warranty as to the continuing ing the accuracy of the information included in the Placement Agent Information Disclosure in any final written agreement with a continuing obligation to update any such information within 14 calendar days of the date that the External Manager knew or reasonably should have known of any material change in the information. A CalPERS Vehicle Manager does not need to represent and warrant as to the accuracy of information provided to them by an External Manager with whom the CalPERS Vehicle invests.

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- (c) Each Placement Agent shall, prior to acting as a Placement Agent, disclose to CalPERS (1) all campaign contributions made by the Placement Agent to any ELECTED CalPERS Board Member OR PERSON(S) WHO HAS THE AUTHORITY TO APPOINT A PERSON TO THE CALPERS BOARD during the prior 24-month period and (2) all gifts, as defined in Government Code section 82028, given by the Placement Agent to any CalPERS Board Member OR PERSON(S) WHO HAS THE AUTHORITY TO APPOINT A PERSON TO THE CALPERS BOARD during the prior 24-month period. Additionally, any subsequent campaign contribution or gift made by the Placement Agent to any ELECTED CalPERS Board Member OR PERSON(S) WHO HAS THE AUTHORITY TO APPOINT A PERSON TO THE CALPERS BOARD during the time the Placement Agent is receiving compensation in connection with a CalPERS investment shall also be disclosed.
- (d) CalPERS staff and, except as specified below, CalPERS Vehicle Managers are responsible for all of the following-except as specified below:
1. Providing External Managers with a copy of this regulation at the time that discussions are initiated with respect to a prospective investment or engagement.
 2. Confirming that the Placement Agent Information Disclosure has been received within 45 days of the time investment discussions are initiated, but in any event, prior to the completion of due diligence and any recommendation to proceed with the contract or Amendment.
 3. For new contracts and Amendments, declining the opportunity to retain or invest with the External Manager if the Placement Agent Information Disclosure reveals that the External Manager has used a Placement Agent that is not registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or, if appropriate, the Commodity Futures Trading Commission. Notwithstanding the above, CalPERS Vehicle Managers may invest in External Managers where the Placement Agent is registered with a recognized non-U.S. financial regulatory authority consistent with subsection (b).1.g.
 4. For new contracts and Amendments, securing the agreement of the External Manager in the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager to provide CalPERS or the CalPERS Vehicle the following remedies in the event the External Manager or CalPERS Vehicle Manager knew or should have known of any material omission or inaccuracy in the Placement Agent Information Disclosure or any other violation of this section:

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- a. Whichever is greater, the reimbursement of any management or advisory fees paid by CalPERS for the prior two years or an amount equal to the amounts paid or promised to be paid to the Placement Agent as a result of the CalPERS or CalPERS Vehicle investment or engagement; and
 - b. At CalPERS or the CalPERS Vehicle's option, as appropriate, and without any default, penalty or liability on the part of CalPERS or the CalPERS Vehicle to the External Manager or CalPERS Vehicle, the authority to terminate immediately the investment management contract or other agreement with the External Manager or CalPERS Vehicle, to withdraw without default, penalty or liability on the part of CalPERS or the CalPERS Vehicle to from the limited partnership, limited liability company or other investment vehicle, or alternatively at CalPERS staff's or the CalPERS Vehicle's discretion to cease making further capital contributions (and paying any fees on these recalled commitments) to the limited partnership, limited liability company or other investment vehicle without penalty; provided, however, that notwithstanding the foregoing, CalPERS or the CalPERS Vehicle shall pay when due all obligations due to a third party lender with respect to commitment debt secured by CalPERS or the CalPERS Vehicles unfunded commitment.
5. For new contracts and Amendments, confirming that the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager provides that the External Manager shall be solely responsible for, and CalPERS or a CalPERS Vehicle shall not pay (directly or indirectly), any fees, compensation or expenses for any Placement Agent used by the External Manager. —A provision that allows the External Manager to pay Placement Agent fees or compensation from capital contributed by CalPERS or a CalPERS Vehicle with a corresponding reduction in the management fee payable with respect to CalPERS or the CalPERS Vehicle's investment shall not be regarded as a payment of the Placement Agent fee or compensation by CalPERS or the CalPERS Vehicle for purposes of this section.
 6. Rejecting any External Manager or Placement Agent's solicitation for any new offer of assets, securities, or services investment for five years after they have committed a violation of this section

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unless the Investment Committee reduces the penalty in an open session upon a showing that the violation was immaterial, unintentional, and that a reduction of the penalty is consistent with the fiduciary responsibilities of the Investment Committee as described in Article XVI, section 17 of the California Constitution.

7. Providing copies of the Placement Agent Information Disclosure to the CalPERS Senior Investment Officer for the asset class for which the External Manager performs investment services, the CalPERS Chief Investment Officer, the CalPERS Chief Executive Officer, the CalPERS Chief of the Office of Enterprise Compliance and CalPERS' General Counsel. The CalPERS Vehicle Manager shall only be responsible for providing a copy of the Placement Agent Information Disclosure to CalPERS staff.
8. Providing the Investment Committee with a copy of the Placement Agent Information Disclosure whenever the Investment Committee makes or approves the decision to invest with the External Manager. This obligation does not apply to the CalPERS Vehicle Manager.
9. Compiling a monthly report containing the names and amounts of compensation agreed to be provided to each Placement Agent by each External Manager as reported in the Placement Agent Information Disclosures, providing the report to the Investment Committee, and disclosing the report to the public by posting it to the CalPERS website. The CalPERS Vehicle shall only be responsible for providing this information to CalPERS staff. The report will also include campaign contributions and gifts to CalPERS Board Members reported by Placement Agents. Notwithstanding the above, CalPERS staff may provide the required disclosure confidentially to the Investment Committee if disclosure involves a proposed investment and public disclosure will impair CalPERS' ability to maximize its investment returns. In such cases, disclosure will be made at the first open meeting of the Investment Committee that is held after the final decision is made whether to invest with the External Manager. The disclosure will include a detailed explanation why the disclosure was originally made confidential.
10. Reporting to the Investment Committee at least quarterly any material violations of this section. The CalPERS Vehicle shall only be responsible for providing this report to CalPERS staff.

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- (e) External Managers and Placement Agents shall comply with this section and cooperate with CalPERS staff in meeting CalPERS staff's obligations under this section.
- (f) CalPERS staff is responsible for implementing this section for CalPERS Vehicles by seeking the written agreement of CalPERS Vehicle Managers to comply with this section. If any such CalPERS Vehicle does not agree in writing to comply with this section, CalPERS staff shall report to the Investment Committee the refusal.
- (g) All parties responsible for implementing, monitoring and complying with this regulation should consider the spirit as well as the literal expression of its provisions. In cases where there is uncertainty whether a disclosure should be made, this regulation shall be interpreted to require disclosure.
- (h) Only the Investment Committee can grant exceptions to this regulation and any such exceptions shall be reported to the Investment Committee and the public within 60 days, except that the CalPERS Chief Investment Officer can agree to an exception for an Amendment, where the decision cannot be delayed until the next Investment Committee meeting. Any exceptions agreed to by the Chief Investment Officer shall be reported out to the public and the Investment Committee within 60 days. The Investment Committee and Chief Investment Officer shall only provide exceptions that are consistent with their fiduciary responsibilities as described in Article XVI, section 17 of the California Constitution, and provided further that all such exceptions are fully disclosed to the public.
- (i) The Placement Agent Information Disclosure and their attachments shall be public records subject to disclosure under the California Public Records Act except as provided in subsection (d)(9). No confidentiality restrictions shall be placed by the External Manager or the Placement Agent on any information provided pursuant to this section.

NOTE: Authority cited: Government Code Sections 7513.85(a), 20120, and 20121, Government Code. Reference: Sections 7513.8, 7513.85, and 7513.9, Government Code.